Supreme Court of the United States

October Term, 1966

—v.—

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED:

I—Did the Postmaster General have authority, under the Post Office Department Financial Control Act of 1950, 64 Stat. 462, Sec. 8(1), to enter into an agreement with the owner of real property (1) to erect a post office building for the Post Office Department on that property and (2) to lease the building from the owner for a 20-year term for Post Office Department use on completion of the building, in view of the Public Contracts Act of 1906, 34 Stat. 255, 41 U. S. C. 11 (1958), which prohibits any government contract unless authorized by statute? 2

II—Did the Court of Appeals and the District Court depart from judicial principle and violate the well-established rule of this Court enunciated in *Chase v. United States*, 155 U. S. 489, voiding post office leases *ab initio* when not made in compliance with Public Contracts Act of 1906, 34 Stat. 255, 41 U. S. C. 11 (1958)? 3

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III—Did the Court of Appeals and the District Court depart from judicial principle and violate the well-established rule of this Court enunciated in *Guerini Stone Co.* v. *P. J. Carlin Co.*, 240 U. S. 264, relating to construction of contracts by reference, annexation and merger of contract instruments in ignoring the existence of the January 1953 build-and-lease agreement and deciding this case only on the basis of the January 1954 lease instrument made pursuant to the January 1953 agreement in issue? 3

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POINT I:

Post Office Department Financial Control Act of 1950, 64 Stat. 462, Sec. 8(1), does not authorize erection of post office buildings and 20-year leases on such buildings. It is merely a Congressional authorization to the Postmaster General to waive the general statutes governing government leases as applied to the Post Office Department 6

POINT II:

Build-and-lease agreements for 20-year term were first authorized under the July 1954 Post Office Department Property Act, 68 Stat. 523, Sec. 203 (a)(1) expressly enacted for that purpose 11

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POINT III:

Under the rule of *Chase* v. *United States*, 155 U. S. 489, the build-and-lease agreement of January 1953 and the January 1954 lease instrument for 20-year term made pursuant to the January 1953 agreement are void and invalid and violate the Public Contracts Act of 1906, 34 Stat. 255, 41 U. S. C. 11 (1958) 13

POINT IV:

Under the rule of *Guerini Stone Co.* v. *P. J. Carlin Co.*, 240 U. S. 264, the build-and-lease agreement of January 1953 and the lease instrument of January 1954 were one contract and the courts below were in error in treating them as separate and independent agreements 14

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Supreme Court of the United States

October Term, 1960

MAX MILLET and DORA MILLET,

Petitioners,

—v.—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Max Millet and Dora Millet, pray that a Writ of Certiorari be issued to review the decision and judgment of the United States Court of Appeals for the Second Circuit entered March 23, 1961, affirming the decision and judgment of the United States District Court for the Eastern District of New York which dismissed the complaint of the petitioners for failure to state a claim.

Opinions Below

The opinion of the Court of Appeals, made a part of the appendix to this petition, is not yet reported officially.

The opinion of the District Court is reported in 189 F. Supp. 88.